

R.D. # 0007-04
Vauxhall, New Jersey

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**SOUTH MOUNTAIN HEALTHCARE
AND REHABILITATION CENTER
Employer**

and

CASE 22-RC-12461

**DISTRICT 6, INTERNATIONAL UNION
OF INDUSTRIAL, SERVICE, TRANSPORT,
AND HEALTH EMPLOYEES
Petitioner**

SECOND SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

On April 22, 2004, I issued a Decision and Order dismissing the instant petition as being barred pursuant to a contract between the Employer and PACE, Local 1-300, AFL-CIO, CLC (herein the Intervenor). On September 22, 2004, the Board remanded the instant matter to me to “analyze whether the Memorandum of Agreement contains a clear and unambiguous effective date.” Having analyzed the matter further in accord with the Board’s instructions, I issued a Supplemental Decision and Order on October 19, 2004, deciding again to dismiss the instant petition because I found that the Memorandum of Agreement contained a clear and unambiguous effective date of March 5, 2004; which barred the processing of the

petition filed herein. Thereafter, the Board in a Decision and Order dated March 18, 2005, 344 NLRB No. 40 (2005) reversed my previous decision, reinstated the petition and remanded the matter to the undersigned for further appropriate action.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Accordingly, I will direct an election in the unit found appropriate below.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.¹
3. The labor organizations involved claim to represent certain employees of the Employer.²
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.³

¹ The Employer is a New Jersey corporation engaged in the operation of a nursing home providing health care and related services at its Vauxhall, New Jersey facility, the only facility involved herein.

² The Intervenor was permitted to intervene in this proceeding based on its collective bargaining relationship with the Employer. The parties stipulated and, I find, that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

³ As indicated above, the Board in its Decision and Order of March 18, 2005, found the Memorandum of Agreement not to be a bar and, thus, a question concerning representation appropriately exists in this matter.

5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:⁴

All full-time and regular part-time nurses aides, dietary staff, housekeeping and laundry employees employed by the Employer at its Vauxhall, New Jersey facility, but excluding all office clerical employees, skilled maintenance employees, licensed practical nurses, registered nurses, professional employees, watchmen, guards and supervisors as defined in the Act.

II. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause

⁴ The unit description is in accord with the stipulation of the parties which I find to be an appropriate unit. There are approximately 110 employees in the unit.

since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **District 6, International Union of Industrial, Service, Transport, and Health Employees; PACE, Local 1-300, AFL-CIO, CLC; or Neither.**

III. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102 on or before **April 6, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

IV. **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Second Supplemental Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, Washington, DC 20570-0001. The Board in Washington must receive this request by **April 12, 2005**.

Signed at Newark, New Jersey, this 30th day of March, 2005.

/s/ Gary T. Kendellen

Gary T. Kendellen, Director Region 22
National Labor Relations Board
20 Washington Place, 5th Floor
Newark, New Jersey 07102